

STATE OF MINNESOTA

IN DISTRICT COURT

EIGHTH JUDICIAL DISTRICT

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ORDER ESTABLISHING SPECIAL PROCEDURES  
IN THE PROBATE DIVISION OF THE  
EIGHTH JUDICIAL DISTRICT

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The following Order replaces the Order signed by Chief  
Judge John J. Weyrens dated March 9, 1983.

Pursuant to Chapter 432, Laws of 1977, and to provide  
for uniform administration of probate proceedings in all  
Courts within the Eighth Judicial District,

IT IS HEREBY ORDERED that the following procedures are  
hereby established for all probate proceedings in the District  
Courts in the Eighth Judicial District.

PROCEDURE I

Appearance Not Required

Minnesota Statute 524.3-405 reads as follows:

"If a petition in a testacy proceeding is  
unopposed, the court may order probate or  
intestacy on the strength of the pleadings  
if satisfied that the conditions of Section  
524.3-409 have been met"...

It is the policy of the Probate Divisions of the Eighth  
Judicial District Courts to permit petitions on the pleadings  
in all formal proceedings under section 524 and 525. If  
written objections are filed or objections are made by an  
interested party or an attorney appearing in his behalf, a  
hearing date on these objections will be set for a later date.

This policy does not preclude attorneys from coming to court on the day of notice for hearing on a petition if for any reason whatsoever they elect to come, but their appearance will be voluntary as it is not required by the court.

## PROCEDURE II

### Proof of Will or Testimony of Subscribing Witness

The Minnesota Statutes are revised to no longer require the testimony of subscribing witnesses.

It is the policy of the Probate Divisions of the Eighth Judicial District Courts to no longer require the so-called "Proof of Will" or "Testimony".

If written objections to the Will are filed, a hearing date for the contest will be set at a later date.

A Will, uncontested and valid on its face, will be presumed valid.

## PROCEDURE III

### Schedule of Non-Probate Assets

It is the policy of the Probate Divisions of the Eighth Judicial District Courts, that the Schedule of Non-Probate Assets is no longer required unless a waiver of Estate Tax is sought.

These are required by the State, but the Probate Court does not look at these Schedules unless an Estate Tax waiver is requested. They serve no useful purpose to the Court except in that sole instance specified.

While this Court will no longer require the filing of the Schedule on Non-Probate Assets as above set forth, the attorney or any interested person may voluntarily file the Schedule on Non-Probate Assets with the Court if they wish to do so.

There are instances when an attorney may want the schedule filed for purposes of record. In the cases where the Schedule is not filed, the Court may order the Schedule to be filed whenever an interested person requests the Schedule be filed.

#### PROCEDURE IV

##### Appointment of Nonresident Personal Representative

It is the policy of the Probate Divisions of the Eighth Judicial District Courts to approve nonresident personal representatives who properly qualify in a formal proceeding.

A nonresident personal representative submits personally to the jurisdiction of the court in any proceedings relating to the estate that may be instituted by any interested person. Notice of any such proceedings shall be delivered to the nonresident personal representative or mailed to him pursuant to Minnesota Statutes, Section 524.3-303.

It is anticipated that generally the court will require a bond when appointing a nonresident personal representative in order to protect interested persons. Upon a showing that it involves a sole heir and no interested persons, or some

justifiable reason, the court in its judgment may waive the bond, but it is anticipated this would be the exception rather than the rule.

#### PROCEDURE V

##### Dormant Estates

It is the policy of the Probate Divisions of the Eighth Judicial District Courts, to insure that all estates are administered in a timely manner and to discourage the dilatory handling of estate matters by personal representatives and their attorneys, and pursuant to M.S.A. 525.475, the following procedure is adopted:

All supervised estates shall be closed within eighteen (18) months after appointment of the personal representative unless a written extension is obtained from the Court. Successive one year extensions will be granted for good cause upon written application by the personal representative or his attorney in letter form. The personal representative and his attorney will be notified of each deadline by the Court Administrator. The failure of the personal representative or his attorney to respond to such notice within ten (10) days shall result in the issuance of an order to show cause.

This court will not actively monitor unsupervised estates. However, for probable cause and upon application of any interested person, an order to show cause shall issue to the personal representative and his attorney.

In all estates, if good cause is not shown, the Court (i) may order removal of the representative, (ii) may order the representative to dismiss the attorney, or (iii) may order other appropriate relief. This Court may also refer the record of any such proceeding to the State Board of Professional Responsibility.

#### PROCEDURE VI

##### Discharge of Personal Representative

It is the policy of the Probate Divisions of the Eighth Judicial District Courts that an order discharging the personal representative may be obtained on a petition pursuant to formal proceedings under Minnesota Statutes, Section 524.3-1001 or Section 524.3-1002. It is expected that the discharge will usually be granted pursuant to a supplemental order following the filing of receipts for distribution of all property in the residue of the estate subsequent to an initial adjudication of final settlement and distribution. This may be accomplished as follows:

(a) The petition for order of complete settlement of the estate and order or decree of distribution should be modified so that Item 10 in the prayer for relief states as follows:

"10. Granting such other and further relief as may be proper, including the discharge of the personal representative."

(b) A final item should be added to the order of complete settlement and order or decree of distribution:

"10. That upon the filing of receipts for the distribution of the residue of the estate, a supplemental order discharging the personal representative shall be issued pursuant to this formal proceeding."

(c) Upon filing receipts for the distribution of all property in the residue of the estate (except real property assigned pursuant to decree), the Court shall issue its order discharging the personal representative. This order shall issue pursuant to the earlier order in the formal proceedings for complete settlement and distribution, and no petition for discharge of the personal representative need be filed with the receipts.

Probate Rule 17.5 states that there is no requirement to file a voucher or receipt for any disbursement stated in an approved final or interim account unless otherwise ordered by the Court. It is the policy of the Court to allow the voluntary filing of the same.

#### PROCEDURE VII

##### Ex Parte Orders in Probate Proceedings

Subject to the exceptions stated, it shall be the policy of the Probate Divisions of the Eighth Judicial District Courts, to grant no ex parte orders after the appointment of the personal representative (regardless of whether the appointment was in formal or informal proceedings and regardless of whether the estate is in unsupervised or supervised administration). The exceptions are:

- (a) Orders issued on a Petition for Waiver of Minnesota Inheritance Tax Lien on Personal Property (relief should be limited to waiver of lien and not include authorization to sell property).
- (b) Orders issued on a Petition for distribution to a person under disability pursuant to Minnesota Statutes, Section 524.3-915 (b).
- (c) Orders and Decrees in proceedings under Minnesota Statutes, Section 525.51.
- (d) In other cases in which a strong and compelling showing of exigency is made.

#### PROCEDURE VIII

Notice Required in Proceedings for  
Complete Settlement of Estate Pursuant to  
Minnesota Statutes, Sec. 524.3 - 1001

If testacy has been previously adjudicated, notice of the hearing on the Petition shall conform to the provisions of Minn. Stat., Sec. 524.1 - 401, and that publication is not required unless an interested person's address or identity cannot be ascertained.

If testacy has not been previously adjudicated, it is the policy of the Probate Divisions of the Eighth Judicial District Courts to require an adjudication of testacy as part of the proceedings on said petition, and published notice pursuant to Minn. Stat., Sec. 524.3 - 403 is required.

NOTE: See Minn. Stat., Sec. 524.3 - 1002, for alternative proceedings and limited relief available when the decedent's will has been informally probated.

PROCEDURE IX

Notice Required in Formal Proceedings  
Subsequent to Initial Appointment  
of Personal Representative

It is the policy of the Probate Divisions of the Eighth Judicial District Courts that notice of hearing in all formal proceedings, (other than appointment of a personal representative) shall be given pursuant to Minn. Stat., Sec. 524.1 - 401, and published notice is unnecessary unless an interested person's address or identity cannot be ascertained.

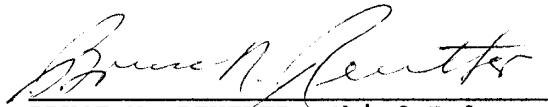
However, if an adjudication of testacy will be made in the formal proceedings, then published notice pursuant to Minn. Stat., Sec. 524.3 - 403 is required.

The above Procedures one through nine have been adopted by the District Court Judges of the Eighth Judicial District.

These Procedures were effective August 1, 1982.

Dated: May 4, 1990.

Nunc Pro Tunc August 1, 1982

  
BRUCE N. REUTHER, Chief Judge



